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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY JOE McDOUGAL,

Defendant and Appellant.

A111301

(San Francisco County
Super. Ct. No. SCR 178457)

Larry Joe McDougal appeals from an order extending his commitment as a mentally disordered offender (MDO). Mr. McDougal's attorney has filed an opening brief in which he raises no issues and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. We have conducted that review, and finding no arguable issues, affirm the judgment.

Mr. McDougal was on parole following convictions of voluntary manslaughter (Pen. Code, § 192, subd. (a)¹), three counts of assault with a deadly weapon (§ 245, subd. (a)(1)), and possession of a controlled substance (Health & Saf. Code, § 11350). His parole was set to expire on September 15, 2005. On March 17, 2003, after violating parole, Mr. McDougal was certified as a MDO. (§ 2962.) He has been committed to Atascadero State Hospital.

On February 22, 2005, in accordance with section 2970, the hospital's acting medical director requested that the district attorney file a petition for Mr. McDougal's continued involuntary treatment under section 2970. The request, made more than 180

¹ Except as indicated, all statutory references are to the Penal Code.

days prior to the termination of Mr. McDougal's parole (September 15, 2005) was timely. (§ 2970.) The district attorney filed a timely petition to extend Mr. McDougal's involuntary treatment.

As was his right, Mr. McDougal was provided with an attorney and was allowed a jury trial. (§ 2972, subd. (a).) The jury returned a verdict that Mr. McDougal continued to be a mentally disordered offender, a verdict that required them to find beyond a reasonable doubt that Mr. McDougal suffers from a severe mental disorder, his severe mental disorder was not in remission or could not be kept in remission without treatment and by reason of his severe mental disorder he represented a substantial danger of physical harm to others. (§ 2972, subd. (c).) The evidence fully supports the jury's verdict. Dr. Wartena, a psychiatrist who had been Mr. McDougal's treating psychiatrist and was familiar with his case, testified about Mr. McDougal's disorder, treatment and behavior. Dr. Wartena testified that Mr. McDougal has been diagnosed with schizoaffective disorder, bipolar type. He is delusional, hears voices, feels paranoid and persecuted and can become very grandiose. His thinking becomes disorganized.

Dr. Wartena testified that Mr. McDougal believed that he had no responsibility for his crimes, reporting, for example, that the man he killed had thrown himself onto Mr. McDougal's knife. Mr. McDougal had exhibited many instances of aberrational behavior while at the hospital. He apparently heard and responded to internal stimuli. He became hostile and abusive when he came up against a hospital rule or when his requests could not be fulfilled quickly. He had become so agitated that he required physical restraints. He had been unable to complete his anger management group. He had begun to expose his penis to female nurses and staff members. Mr. McDougal did not believe he suffered from a mental illness and had refused medications. By May or June 2005, Mr. McDougal had begun to take some medications, and his behavior had improved, but he continued to engage in inappropriate behavior and continued to deny that he suffered from a mental illness.

Dr. Wartena stated her opinion that Mr. McDougal was psychotic, and that his mental disorder was not in remission. His mental illness causes him to be dangerous.

Dr. Wartena also testified that Mr. McDougal had not followed his treatment plan. He refused to take medications prescribed for him. He had failed at the anger management program. He continued to demonstrate the symptoms that contributed to his offenses, and his lack of insight and refusal or inability to understand that he suffers from mental illness made it unlikely he would take medication to control his illness if he were released.

Mr. McDougal was represented throughout the proceedings by experienced, competent counsel, who filed appropriate motions, made all appropriate objections and was able to keep damaging evidence from the jury. Counsel thoroughly cross-examined the expert witness and vigorously argued Mr. McDougal's case. Mr. McDougal was permitted to, and did, take the stand on his own behalf, where he testified that he had not been treated for suffering from a mental illness until his parole was revoked. He told the jury of his accomplishments, and explained how he would take care of himself if he were released. He admitted that he suffered from a mental disorder, but denied that he had engaged in much of the behavior described by Dr. Wartena. Mr. McDougal also denied he had refused to take medications. The jury, however, was entitled to believe Dr. Wartena and to disbelieve Mr. McDougal. In sum, the record presents no grounds for attacking the jury's verdict.

The court properly ordered Mr. McDougal recommitted to the facility in which he had been confined until September 15, 2006. The court also, with the agreement of counsel, dropped any reference to the Health and Safety Code violation, finding that Mr. McDougal could not be deemed a MDO in connection with that case. (§ 2962, subds. (b) & (e).)

In conclusion, we have thoroughly reviewed the record and find no arguable issues. While we have selected certain matters for discussion, we have scrutinized the record in its entirety. There are no issues requiring further briefing.

The order is affirmed.

STEIN, Acting P. J.

We concur:

SWAGER, J.

MARGULIES, J.